HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 477 2004(M/S)

Mahendra Pratap

Versus.

Stm. Raj Sachdeva

Approved for reporting.

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~~Not approved for reporting~~

Date of decision 11.8.2004.

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition no. 477 of 2004 (MS)

Mahendra Pratap Sah .... Petitioner

Versus

Smt. Raj Sachdeva ..... Respondent

Writ Petition no. 463 of 2004 (MS)

Mahendra Pratap Sah .... Petitioner

Versus

Smt. Raj Sachdeva ..... Respondent

Sri Sudhir Kumar, Advocate for the petitioner.
Sri Ishtihaq Ahmad, Advocate for the respondents.

Dated: 11.8.2004

Hon. Rajesh Tandon J.

Heard the learned counsel for the parties.

By the present writ petitions the petitioner has prayed for a writ of certiorari quashing the order dated 5.6.2004 and 16.6.2004 annexure 8 and 12 to the writ petition.

Briefly stated the facts giving rise to the present writ petition are that the respondent is a tenant in a premises known as Rock House, situated in Tallital, Nainital which has been destroyed by fire on 16.4.2004. The plaintiff has stated in his plain that after destruction of the premises in question by fire the landlord is trying to evict the tenant forcibly. The tenant has stated that she has been in possession since before 1953 and as is paying rent to the landlord regularly. Written statement was filed by the landlord where it has been mentioned that the defendant is a law abiding citizen and he never tried to dispossess the plaintiff forcibly. It was stated that defendant along with other co-tenants has already field application under Section 21(1)(b) before the Prescribed Authority, Nainital.

The plaintiff along with the plaint has field an application for ad interim injunction. Injunction was granted in favour of the plaintiff restraining the defendant not to evict the plaintiff from the premises otherwise in due course of law.

The landlord in the case under Section 21)1) (b) filed an application for restraining the tenant not to raise any construction over the premises in dispute. Said application has been rejected by the prescribed authority vide order dated 5.4.2004.

The defendant landlord went in appeal against both the orders. Both the appeals were herd by the District Judge and by a common order dismissed both the appeals.

In writ petition no. 477 of 2004 the petitioner landlord has challenged the order of injunction passed on the application of the petitioner tenant by which order restraining the defendant has been passed by the trial Court as well as by the appellant Court.

So far as the interim injunction under Order 39 Rule 1 C.P.C. is concerned, Section 38 of Specific Relief Act, permits the Civil Court to grant such relief. Section 38 reads as under:

> **38.** ***Perpetual injunction when granted.-***
>
> *(1) Subject to the other provisions contained in or referred to by this Chapter, a perpetual injunction may be granted to the plaintiff to prevent the breach of an obligation existing in his favour, whether expressly or by implication.*
>
> *(2) When any such obligation arises from contract, the court shall be quided by the rules and provisions contained in Chapter II.*
>
> *(3) When the defendant invades or threatens to invade the plaintiffs right to, or enjoyment of, property, the court may grant a perpetual injunction in the following cases, namely:-*
>
> *(a) Where the defendant is trustee of the property for the plaintiff;*
> *(b) Where there exists no standard for ascertaining the actual damage caused, or likely to be caused, by the invasion;*
> *(c) Where the invasion is such that compensation in money would not afford adequate relief;*
> *(d) Where the injunction is necessary to prevent a multiplicity of judicial proceedings.*

In 2004 AIR SCW 4205, Ram Godwda vs. M. Varadapra Naidu, the Apex Court has held as under:

"It is settled possession or effective possession of person without title which would entitle him to protect his possession even as against the true owner. The concept of settled possession and the right of the possessor to protect his possession against the owner has come to be settled by a catena of decisions. Illustratively, we may refer to Munshi Ram and ors. Vs. Delhi Administration, (1968) 2 SCR 455 Puran Singh and ors vs. The State of Punjab (1975) 4 SCC 518

and Ram Tattan and ors. Vs. State of Uttar Pradesh (1977) 1 SCC 188. The authorities need not be multiplied. In Munsi Ram and ors's case (supra), it was held that no one, including the true owner, has a right to dispossess the trespasser by force if the trespasser is in settled possession of the land and in such a case unless he is evicted in the due course of law, he is entitled to defend his possession ever against the rightful owner. But merely stray or even intermittent acts of trespass do not give such a right against the true owner. The possession which a trespasser is entitled to defend against the right owner must be settled possession, extending over a sufficiently long period of time and acquiesced to by the true owner. A casual act of possession would not have the effect of interrupting the possession of the rightful owner. The rightful owner may re-enter and re-instate himself provided he does not use more force than is necessary. Such entry will be viewed only as resistance to any intrusion upon his possession which has never been lost. A stray act of trespass, or a possession which has not matured into settled possession, can be obstructed or removed by the true owner even by using necessary fore. In Puran Singh and ors's case (supra), the Court clarified that it is difficult to lay down any hard and fast rule as to when the possession of a trespasser can mature into settled possession. The 'settled possession' must be (i) effective (ii) undisturbed and (iii) to the knowledge of the owner or without any attempt and concealment by the trespasser. The phrase settled possession does nto carry any special charm of magic in it, nor is it a ritualistic formula which can be confined in a strait jacket. An occupation of the property by a person as an agent or a servant acting at the instance of the owner will not

amount to actual physical possession. The Court laid down the following tests which may be adopted as a working rule for determining the attributes of 'settled possession':

(i) that the trespasser must be in actual physical possession of the property over a sufficiently long period.

(ii) That the possession must be to the knowledge (either express of implied) of the owner or without any attempt at concealment by the trespasser and which contains an element of animus possidendi. The nature of possession of the trespasser would however, be matter to be decided on the facts and circumstances of each case.

(iii) The process of dispossession of the true owner by the trespasser must be complete and final and must be acquiesced to by the true owner; and

(iv) That one of the usual tests to determine the quality of settled possession, in the case of culturable land, would be whether or not the trespasser, after having taken possession, had grown any crop. If the crop had been frown by the trespasser, then even the true owner has no right to destroy the crop grown by the trespasser and take forcible possession."

In view of the aforesaid proposition of law both the Courts below have rightly recorded findings that the plaintiff being in possession of the premises and is paying rent regularly to the

landlord, she is entitled for protection under Order 39 Rule 1 C.P.C.

So far as the question of temporary injunction at the instruction of the defendant landlord is concerned, the law is very much settled that temporary injunction can be prayed by the defendant in his favour against the plaintiff after relying upon the judgment of Apex Court in, 1964 AIR 523, Allahabad High Court 1972 A.L.J. 379 has held as under:

"In the cse of B.F. Verghese vs. Joseph Thomas AIR 1957 Travancore Cochin 286, a mandatory temporary injunction was passed in favour of the defendant the validity of which was challenged before the High Court of Travencora-Cochin. The following ovswervations made by the Court have relevance for the present discussion.:

"The Court below got over the difficulty by saying that if inherent powers of the Court could be exercised in exceptional circumstances on behalf of the plaintiff there was no reason not to extend the same jurisdiction in similar circumstances on behalf of the defendant and it went on to find that the circumstances here were sufficiently exceptional as to require its intervention. I entirely agree with this reasoning."

Right of the defendant to claim injunction is also protected under the provisions of Section 29 of U.P. Act No. 13 of 1972. Clause (b) of Section 29 reads as under:

(b) In respect of any re-erection of repair made before he has given a notice as aforesaid to the landlord or before the expiration of a period of fifteen days after such notice, or if the landlord in the meantime makes an application under section 21 before the disposal of such application;

Both the parties have admitted that an application under section 21(1)(b) of U.P. Act No. 13 of 1972s had been field before the Prescribed Authority and as such the defendant has every right to claim injunction otherwise his cause of action shall be frustrated if the plaintiff is given right to re-construct or repair whole or part of the accommodation.

In view of the aforesaid proposition of law the order passed by both the Courts below refusing injunction to the landlord cannot be said to be justified. The defendant is entitled for injunction only to the extent of re-erection or repair of the premises in dispute. Writ Petition No. 477 of 2004 is, therefore, allowed and writ petition no. 463 of 2004 is hereby dismissed.

However, the prescribed authority is directed to decide application under Section 21 (1)(b) within a period of four months. No order as to costs.

(Rajesh Tandon J.)

11.8.2004
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